

104TH CONGRESS
1ST SESSION

S. 1274

To amend the Solid Waste Disposal Act to improve management of
remediation waste, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 25), 1995

Mr. LOTT (for himself, Mr. SIMPSON, Mr. NICKLES, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Solid Waste Disposal Act to improve
management of remediation waste, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REMEDIATION WASTE MANAGEMENT IMPROVE-**
4 **MENT.**

5 (a) DEFINITIONS.—Section 1004 of the Solid Waste
6 Disposal Act (42 U.S.C. 6903) is amended by adding at
7 the end the following:

8 “(42) COMPLIANCE AUTHORITY.—The term
9 ‘compliance authority’ means the authority to issue,

1 enter into, approve, enforce, and ensure compliance
2 with a remedial action plan.

3 “(43) NONPROGRAM STATE.—The term
4 ‘nonprogram State’ means a State other than a pro-
5 gram State.

6 “(44) ORIGINATING STATE.—The term ‘origi-
7 nating State’ means a State in which remediation
8 waste is generated under a remedial action plan.

9 “(45) PROGRAM STATE.—The term ‘program
10 State’ means a State that has a State remediation
11 waste management program authorized under sec-
12 tion 3006(i).

13 “(46) REMEDIAL ACTION PLAN.—The term ‘re-
14 medial action plan’ means a document or portion of
15 a document (including, but not limited to, an order,
16 permit, or agreement) that—

17 “(A) is issued, entered into, or approved by
18 the Administrator or a program State;

19 “(B) ensures that the management of the
20 remediation waste is performed in a manner
21 that is protective of human health and the envi-
22 ronment by specifying—

23 “(i) the remediation waste that is the
24 subject of the document;

1 “(ii) the manner in which the remedi-
2 ation waste will be managed;

3 “(iii) the methods of remediation; and

4 “(iv) the schedule for implementation;

5 and

6 “(C) has been the subject of appropriate
7 public notice and comment; and

8 “(D) provides for the exercise of compli-
9 ance authority in accordance with section
10 3001(j)(1) and, in the case of a plan over any
11 portion of which any other entity (a State or
12 the Administrator) other than the entity that
13 issued or entered into the plan is to exercise
14 compliance authority, has the concurrence of
15 the other entity for the portion of the plan for
16 which the other entity has compliance author-
17 ity, except that nothing in this subparagraph
18 applies to remediation waste that is managed in
19 accordance with subtitle C.

20 “(47) REMEDIATION WASTE.—The term ‘reme-
21 diation waste’ means a solid waste or any medium
22 (including ground water, surface water, soil, and
23 sediment) generated during implementation of a re-
24 medial action plan that—

1 “(A) is, or is derived from, a listed hazard-
2 ous waste;

3 “(B) contains or is mixed with a listed
4 hazardous waste; or

5 “(C) exhibits a characteristic of a hazard-
6 ous waste.”.

7 (b) IDENTIFICATION AND LISTING.—Section 3001 of
8 the Solid Waste Disposal Act (42 U.S.C. 6921) is amend-
9 ed by adding at the end the following:

10 “(j) REMEDIATION WASTE.—

11 “(1) COMPLIANCE AUTHORITY.—

12 “(A) PROGRAM STATES.—Except as pro-
13 vided in section 3008, a program State shall ex-
14 ercise compliance authority with respect to a re-
15 medial action plan insofar as the remedial ac-
16 tion plan describes the management of remedi-
17 ation waste in the program State.

18 “(B) NONPROGRAM STATES.—The Admin-
19 istrator shall exercise compliance authority with
20 respect to a remedial action plan insofar as the
21 remedial action plan describes the management
22 of remediation waste in a nonprogram State.

23 “(C) REMEDIATION WASTE MANAGED
24 INTERSTATE.—With respect to the management
25 of remediation waste under a remedial action

1 plan that provides that part of the management
2 will be performed in another State other than
3 the originating State—

4 “(i) if the other State is a program
5 State, the program State shall exercise
6 compliance authority with respect to the
7 portions of the remedial action plan de-
8 scribing the management of remediation
9 waste in the other State; or

10 “(ii) if the other State is a
11 nonprogram State, the Administrator shall
12 exercise compliance authority with respect
13 to the portions of the remedial action plan
14 describing the management of remediation
15 waste in the other State.

16 “(2) CONDITIONAL EXCLUSION.—Notwithstand-
17 ing any other provision of this subtitle, remediation
18 waste that is managed under a remedial action plan
19 shall not to be a hazardous waste for purposes of
20 this subtitle.”.

21 (c) AUTHORIZED STATE HAZARDOUS WASTE REME-
22 DIATION PROGRAMS.—Section 3006 of the Solid Waste
23 Disposal Act (42 U.S.C. 6926) is amended by adding at
24 the end the following:

1 “(i) AUTHORIZED STATE REMEDIATION WASTE
2 MANAGEMENT PROGRAMS.—

3 “(1) STATES WITH AUTHORIZED HAZARDOUS
4 WASTE PROGRAMS.—

5 “(A) CERTIFICATION.—A State that has a
6 hazardous waste program authorized under sub-
7 section (b) may submit to the Administrator a
8 certification, supported by such documentation
9 as the State considers to be appropriate, dem-
10 onstrating that the State has—

11 “(i) statutory and regulatory author-
12 ity (including appropriate enforcement au-
13 thority) to control the management of re-
14 mediation waste from generation to final
15 disposal in a manner that is protective of
16 human health and the environment;

17 “(ii) resources in place to administer
18 and enforce the authorities; and

19 “(iii) procedures to ensure public no-
20 tice and opportunity for comment on reme-
21 dial action plans submitted to the State.

22 “(B) INTERIM AUTHORIZATION.—Subject
23 to subparagraph (C)(iii), beginning 60 days
24 after submission of a certification under sub-
25 paragraph (A), the State may proceed to carry

1 out the remediation waste management pro-
2 gram of the State until the Administrator is-
3 sues a final determination under subparagraph
4 (C).

5 “(C) DETERMINATION.—

6 “(i) IN GENERAL.—Not later than 18
7 months after the date on which a State
8 submits to the Administrator a certifi-
9 cation under subparagraph (A), after pub-
10 lic notice and opportunity for comment,
11 the Administrator shall issue to the State
12 and publish in the Federal Register a de-
13 termination that—

14 “(I) the certification meets all of
15 the criteria stated in subparagraph
16 (A), and the State has final authoriza-
17 tion to carry out the remediation
18 waste management program of the
19 State; or

20 “(II) the certification fails to
21 meet 1 or more of the criteria stated
22 in subparagraph (A), stating with
23 particularity the elements of the State
24 program that are considered to be de-
25 ficient, and that the deficiency would

1 be likely to result in a State remedi-
2 ation waste management program
3 that is not protective of human health
4 and the environment.

5 “(ii) DEFAULT.—

6 “(I) IN GENERAL.—Except as
7 provided in subclause (II), if the Ad-
8 ministrator does not issue a deter-
9 mination under clause (i) within 18
10 months after the date on which a
11 State submits to the Administrator a
12 certification under subparagraph (A),
13 the certification shall be considered to
14 meet all of the criteria stated in sub-
15 paragraph (A), and the State shall
16 have final authorization to carry out
17 the remediation waste management
18 program of the State.

19 “(II) WITHDRAWAL OF AUTHOR-
20 IZATION.—If the Administrator subse-
21 quently withdraws authorization for a
22 State remediation waste program in
23 accordance with subsection (e), the
24 Administrator shall ensure completion
25 of any ongoing remedial action plan.

1 “(iii) PRELIMINARY DETERMINA-
2 TION.—If the Administrator determines
3 that—

4 “(I) on preliminary review, it ap-
5 pears that it will likely be determined
6 after notice and comment that a cer-
7 tification fails to meet 1 or more of
8 the criteria stated in subparagraph
9 (A); and

10 “(II) injury to human health or
11 the environment would likely result
12 from interim implementation of the
13 State remediation waste management
14 program under subparagraph (B),
15 the Administrator may issue a preliminary
16 determination to the State, and the State
17 shall not have interim authorization under
18 subparagraph (B).

19 “(2) STATES WITHOUT AUTHORIZED HAZARD-
20 OUS WASTE PROGRAMS.—

21 “(A) CERTIFICATION.—A State that does
22 not have a hazardous waste program authorized
23 under subsection (b) may submit to the Admin-
24 istrator a certification, supported by such docu-

1 mentation as the State considers to be appro-
2 priate, demonstrating that the State has—

3 “(i) statutory and regulatory author-
4 ity (including appropriate enforcement au-
5 thority) to control the management of re-
6 mediation waste from generation to final
7 disposal in a manner that is protective of
8 human health and the environment;

9 “(ii) resources in place to administer
10 and enforce the authorities; and

11 “(iii) procedures to ensure public no-
12 tice and opportunity for comment on reme-
13 dial action plans submitted to the State.

14 “(B) INTERIM AUTHORIZATION.—Begin-
15 ning 1 year after a certification under subpara-
16 graph (A), the State may proceed to carry out
17 the remediation waste management program of
18 the State until the Administrator issues a de-
19 termination under subparagraph (C).

20 “(C) DETERMINATION.—

21 “(i) IN GENERAL.—Not later than 2
22 years after the date on which a State sub-
23 mits to the Administrator a certification
24 under subparagraph (A), after public no-
25 tice and opportunity for comment, the Ad-

1 administrator shall issue to the State and
2 publish in the Federal Register a deter-
3 mination that—

4 “(I) the certification meets all of
5 the criteria stated in subparagraph
6 (A), and the State has final authoriza-
7 tion to carry out the remediation
8 waste management program of the
9 State; or

10 “(II) the certification fails to
11 meet 1 or more of the criteria stated
12 in subparagraph (A), stating with
13 particularity the elements of the State
14 program that are considered to be de-
15 ficient.

16 “(ii) DEFAULT.—

17 “(I) IN GENERAL.—Except as
18 provided in subclause (II), if the Ad-
19 ministrator does not issue a deter-
20 mination under clause (i) within 2
21 years after the date on which a State
22 submits to the Administrator a certifi-
23 cation under subparagraph (A), the
24 certification shall be considered to
25 meet all of the criteria stated in sub-

1 paragraph (A), and the State shall
2 have final authorization to carry out
3 the remediation waste management
4 program of the State.

5 “(II) WITHDRAWAL OF AUTHOR-
6 ITY.—If the Administrator subse-
7 quently withdraws authorization for a
8 State remediation waste management
9 program in accordance with sub-
10 section (e), the Administrator shall
11 ensure completion of any ongoing re-
12 medial action plan.”.

13 (d) ENFORCEMENT.—Section 3008(a) of the Solid
14 Waste Disposal Act (42 U.S.C. 6928(a)) is amended—

15 (1) in paragraph (1)—

16 (A) by striking “paragraph (2)” and in-
17 serting “paragraphs (2) and (3)”; and

18 (B) by inserting after “subtitle” the follow-
19 ing: “or any requirement contained in a reme-
20 dial action plan issued or entered into by the
21 Administrator or with respect to which the Ad-
22 ministrator exercises compliance authority
23 under section 3001(j)”; and

24 (2) by redesignating paragraph (3) as para-
25 graph (4); and

1 (3) by inserting after paragraph (2) the follow-
2 ing:

3 “(3) REMEDIATION WASTE.—

4 “(A) NOTICE OF VIOLATION.—Notwith-
5 standing any other provision of this section, if,
6 on the basis of any information, the Adminis-
7 trator determines that a person has violated or
8 is in violation of any requirement for the man-
9 agement of remediation waste contained in a re-
10 medial action plan implemented under a State
11 remediation waste management program au-
12 thorized under section 3006(i), the Adminis-
13 trator shall provide notice to the State in which
14 the violation occurred or is occurring prior to
15 commencing any action to require compliance
16 with the requirements of the remedial action
17 plan.

18 “(B) COMPLIANCE ORDER.—If, after the
19 30th day after the Administrator issues a notice
20 of violation under subparagraph (A), a State
21 has not taken appropriate action to require
22 compliance with requirements of the remedial
23 action plan, the Administrator may issue an
24 order or commence an action under paragraph
25 (1) to enforce the remediation waste manage-

1 ment requirements of the remedial action
2 plan.”.

3 (e) RELEASE, DETECTION, PREVENTION, AND COR-
4 RECTION.—Section 9003 of the Solid Waste Disposal Act
5 (42 U.S.C. 6991b) is amended by adding at the end the
6 following:

7 “(i) PETROLEUM-CONTAMINATED MEDIA AND DE-
8 BRIS.—Petroleum-contaminated media and debris that fail
9 the test for toxicity characteristics due to organics issued
10 by the Administrator under section 3001, and are subject
11 to corrective action under this section, shall not be consid-
12 ered to be hazardous waste for purposes of subtitle C.”.

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